

BEFORE THE  
MISSOURI REAL ESTATE COMMISSION

In the matter of the application of                     )  
   )  
                  **KIP P. SMITH**   )  
   )  
                  Applicant  )

**ORDER OF THE MISSOURI REAL ESTATE COMMISSION  
REGARDING ISSUANCE OF A PROBATED REAL ESTATE  
BROKER LICENSE TO KIP P. SMITH**

The Missouri Real Estate Commission ("MREC") hereby issues its ORDER granting a PROBATED real estate broker license to Kip P. Smith ("Smith") pursuant to the provisions of § 324.038, RSMo<sup>1</sup>. As set forth in § 324.038, RSMo, Smith may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the MREC's decision to issue a probated real estate broker license. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date of delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, 131 W. High Street, Jefferson City, Missouri 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the MREC's decision shall be considered waived.

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise specified.

**FINDINGS OF FACT**

Based upon the foregoing, the MREC hereby states:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of § 339.010 to 339.205 and § 339.710 to 339.860, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.
2. Kip P. Smith is a natural person residing at the address of 206 Grant Street, Carthage, Missouri.
3. On or about March 22, 2019, the MREC received Smith's application for an additional real estate broker license ("Application").
4. On his Application, Section 1B, question B, Smith was asked if he had "ever had a real estate application denied or your real estate license suspended, revoked, placed on probation, or otherwise disciplined in Missouri or any other state or jurisdiction? Check yes if NOT previously disclosed to this Commission and provide name of state or jurisdiction, reason for denial or discipline and approximate dates on a separate sheet." Smith responded, "YES" to Section 1B, question B.
5. On or about June 13, 2018, Smith and the MREC entered into a Settlement Agreement, placing Licensee's real estate broker associate license, license number 2011014022, on probation for a period of two years as a result of Smith practicing as a real estate broker and serving as the designated broker for Smith Midwest LLC

while Smith's license was suspended pursuant to section 324.010, RSMo (HB 600) for Smith's failure to pay or file state income taxes. The probation on Smith's broker associate license became effective on June 28, 2018.

## II

### **CONCLUSIONS OF LAW**

6. As a result of the conduct giving rise to the Settlement Agreement placing Smith's broker associate license on two years' probation, identified in Section I herein, cause exists for the MREC to deny Smith's application for an additional real estate broker license pursuant to § 339.080.1 RSMo, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100, . . . ."

7. As a result of the conduct giving rise to the Settlement Agreement placing Smith's broker associate license on two years' probation, identified in Section I herein, cause exists for the MREC to deny Smith's application for an additional real estate broker license pursuant to the provisions of §§ 339.100.2(16) and (19), RSMo, which states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

8. Section 339.040.1 RSMo, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate broker-associate in a manner so as to safeguard the public's interest.
9. As a result of the conduct giving rise to the Settlement Agreement in Section I herein, Smith has engaged in conduct that adversely affect his moral character, his reputation, and his fitness and qualifications to practice as a real estate broker.
10. As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1 RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.
11. The MREC issues this Order in lieu of denial of Smith's application for an additional real estate broker license. The MREC has determined that this Order is necessary to ensure the protection of the public.

### III

#### **TERMS AND CONDITIONS**

12. Based on the foregoing, the Missouri real estate broker license issued to Smith is subject to the following terms and conditions.
13. **Smith's broker license is on probation.** Smith's real estate broker license is hereby placed on PROBATION for a period to run concurrently with the probation placed on Licensee's broker associate license (license number 2011014022). During the period of probation on his real estate broker license, Smith shall be entitled to practice as a real estate broker provided he adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."
14. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:
  - A. Smith shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of residence and business. Smith shall notify the MREC in writing within ten days of any change in this information.
  - B. If at any time during the disciplinary period Smith wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Smith must obtain the Broker Acknowledgement form from the MREC.

C. Smith shall timely renew his Missouri real estate broker and broker-associate license(s), timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain his license(s) in a current and active state. During the disciplinary period, Smith shall not place his license(s) on inactive status as would otherwise be allowed pursuant to 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Probated License Order, Smith may surrender his real estate license(s) by submitting a Surrender of Licensure Rights and Privilege Form to the MREC. If Smith applies for a real estate license after surrender, Smith shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Probated License Order.

D. Smith shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

E. Smith shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

F. During the probationary period, Smith shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

G. Smith shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

H. Smith shall not obtain any new licenses from the MREC during the disciplinary period without prior written approval of the MREC.

15. Upon the expiration and successful completion of the disciplinary period, Smith's real estate broker license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Smith has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Smith's real estate broker license.
16. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo.
17. If the MREC determines that Smith has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.
18. If any alleged violation of this Order occurs during the disciplinary period, the MREC may choose to conduct a hearing before it either during the disciplinary

period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

19. The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 339, 610, and 324, RSMo.

SO ORDERED AND EFFECTIVE THIS 9<sup>TH</sup> DAY OF APRIL 2019.

  
Terry W. Moore, Executive Director  
Missouri Real Estate Commission